REMARKS

Applicant respectfully request reexamination and reconsideration of the application in view of the amendments and following remarks.

Claims 1-4, and 12 have been canceled, claims 5, 7, and 9 have been amended.

The Examiner has rejected claims 1-4, 7 and 12 under 35 USC §102(b) as being anticipated by Kuchenbecker (4,592,914)

Applicants has canceled the claims in order to expedite prosecution of the application.

The Examiner has rejected claims 5, 6, and 8-11 under 35 USC §103(a) as being unpatentable over Kuechenbecker in view of Sasaki et al. (4,835,352), Fong (5,177,332) Welles, (4,861,957) , Flautt et al. (4,268,738), Fisher (4,911,938) and Paulucci(6,168,812).

Applicants respectfully traverses the rejection for none of the references show all of the features of Applicant's claimed invention and combination of the multitude of references in an effort to disclose all of the claimed features of Applicant's invention is clearly hindsight.

Accordingly, Applicants' respectfully submit that none of the references alone or in combination, discloses or suggests applicants' invention described in 5, 6, and 8-11 as amended..

In this regard, the Court of Appeals for the Federal Circuit has repeatedly held that, for a combination of references to be proper, the references themselves, or some other prior art

knowledge, must suggest the desirability of the combination or provide some motivation or incentive to put the combination together. As stated in In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984):

> The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification (emphasis added).

See also, e.g., Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985); In re Grabiak, 769 F.2d 729, 731 226 U.S.P.Q. 870, 872 (Fed. Cir. 1985); In re Sernaker, 702 F.2d 989, 994, 217 U.S.P.Q. 1, 5 (Fed. Cir. 1983); W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 U.S.P.Q. 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

It is thus improper to first determine what is claimed as the invention at issue and then select isolated facts from the prior art to reconstruct the claimed invention.

> We are required to evaluate the claimed subject matter as a whole against the teachings of the prior art references of record. 35 U.S.C. §103. References are evaluated by ascertaining the facts fairly disclosed therein as a whole. It is impermissible to first ascertain factually what appellants did and then view the prior art in such a manner as to select from the random facts of that art only those which may be modified and then utilized to reconstruct appellants' invention from such prior art. Application of Shuman, 361 F.2d 1008, 1012 (C.C.P.A. 1966).

Such an analysis is improper and cannot establish obviousness because it necessarily requires the use of hindsight gained from the inventor's own disclosure.

> Hindsight ... is quite improper when resolving the question of obviousness. To use the patent in suit as a guide through the morass of prior art references, combining the right references in the right way to arrive at the result of the claims in suit ... is also quite improper. Medtronic, Inc. v. Daig Corp., 611 F.Supp. 1498, 1534, 227 U.S.P.Q. 509, 535 (D. Minn. 1985), aff'd, 789 F.2d 903 (Fed. Cir.), cert. denied, 479 U.S. 931 (1986).

Applicants submit that, as in the foregoing authorities, a combination of Kuechenbecker , Sasaki et al., Fong, Welles, Flautt et al., Fisher, and Paulucci gained the claims presented herein would be improper because the references themselves are completely silent with respect to such a combination.

Moreover, a combination of the Kuechenbecker , Sasaki et al., Fong, Welles, Flautt et al., Fisher, and Paulucci references would improperly disregard the "teaching away" disclosure. It has expressly held that in determining whether a combination of prior art references is proper, consideration must be given to those portions of a reference which teach away from the claimed invention.

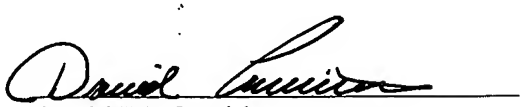
> In its consideration of the prior art, however, the district court erred ... in considering the references in less than their entireties, i.e., in disregarding disclosures in the references that diverge from and teach away from the invention at hand. W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 U.S.P.Q. 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).
>
> * * *
>
> As the ALJ recognized, prior art references before the tribunal must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention. Akzo N.V. v. U.S. Intern. Trade Com., 808 F.2d 1471, 1481, 1 U.S.P.Q.2d 1241, 1246 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987) (emphasis added).

Moreover, the Federal Circuit Court has held that "[a] person of ordinary skill in the art is presumed to be one who thinks along the line of conventional wisdom and is not one who undertakes to innovate, whether by patient, systematic research or extraordinary insights, it makes no difference which." Standard Oil Co. v. American Cyanamid Co., 774 F.2d 448, 454, 227 U.S.P.Q. 293, 298 (Fed. Cir. 1985).

Applicant agrees with the Examiner that the remainder of the references cited on the PTO892 form are of interest but no more relevant than the cited references.

For all of the foregoing reasons, Applicant submits that the claims are patentable over the cited references and that the application is in condition for allowance. Accordingly, Applicant respectfully requests prompt reconsideration and receipt of the formal Notice of Allowance. If the Examiner believes there are other unresolved issues in this case, Applicant's attorney would appreciate a telephone call at (502) 452-1233 to discuss any such remaining issues.

Respectfully submitted,



David W. Carrithers
CARRITHERS LAW OFFICE, PLLC
6200 Dutchman's Lane, Suite 206
Louisville, KY 40205
Telephone (502) 452-1233
Reg. No. 35,475